

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
CENTRAL VALLEY REGION

CLEANUP AND ABATEMENT ORDER NO. 98-721

FOR  
JOE J. MACHADO, LILLIAN E. MACHADO,  
BRUCE KIMBROUGH, JOANNE KIMBROUGH  
LUCKY J DAIRY  
SAN JOAQUIN COUNTY

This Order is issued to Joe J. Machado, Lillian E. Machado, Bruce Kimbrough, Joanne Kimbrough, and the Lucky J. Dairy (hereafter jointly referred to as Discharger) based on provisions of the California Water Code Section 13304, which authorizes issuance of a Cleanup and Abatement Order.

The Executive Officer finds, with respect to the Discharger's acts, or failure to act, the following:

1. The Lucky J Dairy (the Facility) is at 17529 W. Grant Line Road, Tracy, in the southeast 1/4 of Section 16 T2S, R4E, MDB&M. Mr. Bruce Kimbrough operates the Facility; and Mr. Joe J. Machado and Mrs. Lillian E. Machado own the real property where the facility and associated cropland are located (Assessor's Parcel No. 209-060-08).
2. The assessor's map indicates that the Parcel No. 209-060-08 is 148 acres. According to State records, the dairy herd is 849 milk cows.
3. On 8 November 1988, Regional Board Staff conducted an inspection of the Facility in response to complaints of dairy wastewater being discharged to the roadside ditch along Grant Line Road. The inspection revealed a pond of dairy wastewater in the roadside ditch and a recent breach in the berm on the east side of the holding pond. Electrical Conductivity (EC) of the water standing in the roadside ditch was 2900  $\mu\text{mhos/cm}$ . Records show that the pond overflow was due to failure of a lift pump, which was subsequently repaired.
4. During an inspection on 5 March 1993 in response to a complaint alleging nuisance conditions emanating from the Facility's wastewater retention pond, Staff observed that the wastewater retention pond on the southwest corner of Patterson Pass Road and Grant Line Road had overflowed. Wastewater had flowed in the roadside ditch and had discharged into a field in the southeast corner of the same intersection. Stormwater was also ponded in and around the corrals.
5. In April 1995 and in May 1996 San Joaquin County Environmental Health Division received complaints that the wastewater retention pond at the Lucky J Dairy had overflowed onto a field and onto the roadway.
6. Regional Board Staff conducted an inspection in response to complaints on 29 January 1997. The complaints alleged continuous discharge of wastewater from the retention pond for several days, beginning 23 January 1997. The inspection on 29 January revealed wastewater flowing at a rate of approximately 30 gallons per minute from the west side of the waste retention area into the ditch along Grant Line Road. The wastewater was flowing into an area of cropland at the intersection of Grant Line Road and Hansen Road, over a mile from where the discharge had commenced at the



or threatens to create, a condition of pollution or nuisance.

15. Title 27, Division 2, Chapter 7, Subchapter 2, CCR contains the following discharge specifications for groundwater protection:

- a. Manure storage areas shall be managed to minimize percolation of water into underlying soil.
- b. Application of wastewater to cropland and disposal fields shall be managed to minimize the percolation to groundwater.
- c. Animal containment facilities shall have adequate surface drainage to prevent continuous accumulation of surface water in corrals and feed yards.
- d. Application of wastewater to cropland and disposal fields shall be at rates that are reasonable for the crop, soil, climate, special location situations, management system, and type of manure.

16. Section 13304(a) of the California Water Code provides that:

“Any person who has discharged or discharges waste into waters of this state in violation of any waste discharge requirements or other order or prohibition issued by a regional board or the state board, or who has caused or permitted, causes or permits, or threatens to cause or permit any waste to be discharged or deposited where it is, or probably will be, discharged into the waters of the state and creates, or threatens to create, a condition of pollution or nuisance, shall upon order of the regional board clean up such waste or abate the effects thereof or, in the case of threatened pollution or nuisance, take other necessary remedial action. Upon failure of any person to comply with such cleanup or abatement order, the Attorney General, at the request of the board, shall petition the superior court for that county for the issuance of an injunction requiring such person to comply therewith. In any such suit, the court shall have jurisdiction to grant a prohibitory or mandatory injunction, either preliminary or permanent, as the fact may warrant.”

17. Section 13304(c)(1) of the California Water Code provides that:

“If the waste is cleaned up or the effects of the waste are abated, or, in the case of threatened pollution or nuisance, other necessary remedial action is taken by any governmental agency, the person or persons who discharged the waste, discharges the waste, or threatened to cause or permit the discharge of waste within the meaning of subdivision (a), are liable to that governmental agency to the extent of the reasonable costs actually incurred in cleaning up the waste, abating the effects of the waste, supervising the cleanup or abatement activities, or taking other remedial action. The amount of the costs is recoverable in a civil action by, and paid to, the governmental agency and state board to the extent of the latter’s contribution to the cleanup costs from the State Water Pollution and Abatement Account or other available funds.”

18. Section 13267(b) of the California Water Code provides that:

“In conducting an investigation specified in subdivision (a), the regional board may require that any person who has discharged, discharges, or is suspected of discharging, or who proposes to discharge waste within its region, or any citizen or domiciliary, or political agency or entity of this state who has discharged, discharges, or is suspected of discharging, or who proposes to discharge waste outside of its region that could affect the quality of waters of the state within its region shall furnish, under penalty of perjury, technical or monitoring program reports which the regional board requires. The burden, including costs, of these reports shall bear a reasonable relationship to the need for the report and the benefits to be obtained from the reports.”

19. The issuance of this Order is an enforcement action taken by a regulatory agency and is exempt from the provisions of the California Environmental Quality Act, pursuant to Section 15321(a)(2), Title 14, California Code of Regulations.
20. Any person affected by this action of the Board may petition the State Water Resources Control Board to review the action. The petition must be received by the State Board within 30 days of the date of this Order. Copies of the law and regulations applicable to filing petitions will be provided upon request.

IT IS HEREBY ORDERED THAT, pursuant to Sections 13267 and 13304 of the California Water Code, Joe J. Machado, Lillian E. Machado, Bruce Kimbrough, Joanne Kimbrough, and the Lucky J Dairy shall:

1. Except in the case of runoff generated during a storm exceeding a 25-year, 24-hour event, immediately abate any and all discharges of manured wastewater into surface waters of the State.
2. Operate the Lucky J Dairy in compliance with Title 27, Division 2, Chapter 7, Subchapter 2 of the California Code of Regulations.
3. Reimburse the Regional Water Quality Control Board, the State Water Resources Control Board, the Department of Fish and Game, and any other state or federal agency providing assistance to the Regional Board in administering this Order for reasonable costs associated with oversight of actions taken in response to this Order. By **30 June 1998** submit the name and address to be used for billing purposes for reimbursement charges. Failure to provide the name and address and/or failure to reimburse the Regional Board for reasonable oversight costs shall be considered a violation of this Order.
4. Conduct daily inspections of waste holding areas and cropland being irrigated with wastewater and report any off-property discharge of wastewater containing manure to the Regional Board within 72 hours of discovering the discharge.

5. By **15 July 1998**, submit plans and a construction schedule for permanent modifications to the wastewater distribution system and other portions of the dairy waste management system that will be completed by **30 September 1998** and that will prevent off-property discharges of wastewater containing manure. The plans shall be prepared and signed by a California Registered Engineer. Once approved by Regional Board Staff, the construction schedule shall become part of this Order and will be enforceable under this Order.
6. By **19 October 1998**, submit a report describing the completed modifications to the dairy waste management system and any related improvements in wastewater management necessary to ensure that all wastewater is retained on the facility property.
7. By **19 October 1998**, submit a report presenting a nutrient and water balance study for the facility, including a description of any operational changes necessary to operate the facility in compliance with Title 27, Division 2, Chapter 7, Subchapter 2 of the California Code of Regulations.

This Order is effective upon the date of signature.

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GARY M. CARLTON, Executive Officer

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22 May 1998

(Date)

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